

Newton, Mimi

From: Stephen M. Richmond <SRichmond@bdlaw.com>
Sent: Wednesday, February 13, 2013 11:24 AM
To: NEWTON, MEREDITH
Subject: Interpretation of 40 CFR 270.72(a)(4) - change in ownership or operational control

Mimi - thank you for speaking with me earlier this month and again yesterday about the effect of a two-step divestiture process on an interim status facility. I am writing to seek EPA confirmation of the conclusions of our discussion.

Siemens Industry, Inc. (SII) owns and operates a hazardous waste management facility located on Tribal land in Parker, Arizona. The Parker facility is in interim status under 40 CFR Part 265 and 270. SII has announced its intent to sell its water business, of which the Parker facility is a part. There is no identified buyer, so our discussion at this point is conceptual.

The sale process is likely to occur in two steps. In the first step, in preparation for the sale, SII is likely to establish a new entity, either a corporation or a limited liability company, and to move its water assets into that entity, including the Parker facility. The new entity will be wholly owned by SII and/or an affiliated Siemens company. In the second step, either all of the stock (or in the case of an LLC, all of the membership interest) of the new entity will be sold to a third party, or if the sale is structured as an asset sale, then all of the assets held by the new company will be sold directly to a third party.

Under the interim status rule, if there is a change in ownership or operational control, as set forth in 40 CFR 270.72(a)(4), the owner or operator must submit a revised Part A permit application to EPA at least 90 days in advance of the scheduled change. We have discussed the two step process above, and I understand that EPA will consider the first step of the described process – which is entirely internal to SII - to not constitute a change in ownership or operational control, and that EPA will consider the second step in the process – the sale to the third party - to constitute a change in ownership or operational control which will require submittal of a revised Part A.

Kindly let me know by return e-mail if I understand EPA's position on this transfer process correctly. We want to be certain that SII adheres to EPA's interpretation of the change provision in its rule. As you suggested, SII would be happy to provide a letter to EPA immediately prior to the first step in the process so that EPA remains fully apprised of the schedule.

Thank you very much for your assistance on this inquiry.

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